

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 09-10823-RWZ

ROBERT J. FORREST, ESQ.

v.

KAREN E. WIER, ESQ., ET AL.

ORDER

June 21, 2010

ZOBEL, D.J.

Robert J. Forrest, administrator of the estate of Robert B. Cutler, a deceased veteran, brought suit against Cutler's former custodian, Karen E. Wier, for breach of fiduciary duty and negligence in discharging her duties as custodian.

Forrest, a lawyer, was appointed Cutler's guardian by the Plymouth Probate Court in 1981 and served as such until Cutler's death in March 2009. Cutler was totally disabled from a head injury suffered during the Korean War and prior to his death was paid benefits by the Veterans Administration (VA) in the amount of \$2,400 per month. For more than 27 years, Forrest, as a custodian appointed by the VA, received and managed the monies it paid to Cutler. At some time before December 2006, the VA disputed the fees charged by Forrest as excessive, and in December 2006, it terminated Forrest's service as fiduciary pursuant to Title 38, U.S.C., and suspended payment of Cutler's monthly benefits to Forrest. In his stead, the VA selected defendant, Attorney Karen Wier, to serve as the statutory custodian for the reception

and disbursement of Cutler's benefits.

After Cutler's death in March 2009, the Middlesex Probate Court appointed Forrest Temporary Administrator with the will annexed. In that capacity, Forrest filed an action for an accounting in state court against both Wier and the Veterans Administration. Thereafter, the VA removed the case to federal court, and Forrest filed an amended complaint seeking monetary damages as well as an accounting.

On September 15, 2009, this court ordered: (1) the VA to disclose to plaintiff Wier's accounting and other records filed with the VA; and (2) Wier to disburse Cutler's remaining VA benefits to Forrest at such time as Forrest was appointed permanent Administrator of Cutler's estate. (See Docket # 17 and Electronic Order dated 9/15/09.)

Thereafter, both defendants moved to dismiss. In an order dated November 16, 2009, this court allowed the VA's motion to dismiss and denied Wier's. Forrest's claims against Wier remain. On January 22, 2010, Wier filed a "Third Party Complaint," which is a counterclaim against Forrest, with respect to which Forrest seeks judgment on the pleadings. (Docket # 45.) Several discovery motions are pending as well. (Docket ## 33, 35, 37, 41, 44.)

It appears from the docket that Wier has disbursed the remaining funds (\$57,745.12) to Cutler's estate. (Docket # 40.) However, it is not clear whether plaintiff ever received an accounting of transactions during Wier's tenure as custodian.

Accordingly, it is ordered that Wier shall produce an accounting within 14 days of this order, which shall include the amount of funds received, date received, amount and dates of disbursement(s), and to whom funds were disbursed. Wier's failure to

comply with this shall subject her to sanctions in the amount of \$500 per day starting on July 6, 2010. The remaining discovery motions are deferred pending compliance with the court's order.

June 21, 2010

DATE

/s/Rya W. Zobel

RYA W. ZOBEL

UNITED STATES DISTRICT JUDGE